TRANSCRIPT OF RECORD
VOL. I

****

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. _____

STATE OF FLORIDA on the relation of AUSTIN LLOYD and RUBY LLOYD, his wife,

Petitioners,

-vs-

THE CITY OF FORT PIERCE, a municipal corporation,

Respondent.

Petition for Writ of Certiorari to the Circuit Court of the 19th Judicial Circuit in and for St. Lucie County, Florida.

****

IN THE SUPREME COURT OF THE
UNITED STATES

CASE NO.

STATE OF FLORIDA on the relation
of AUSTIN LLOYD and RUBY LLOYD,
his wife,

Petitioners,

-vs-

THE CITY OF FORT PIERCE, a
municipal corporation,

Respondent

* * * * * * * * * * * * * * * * * * *

STIPULATED RECORD ON APPEAL

Philip G. Nourse
Attorney for Petitioners
133-A North 4th Street
Fort Pierce, Florida, 33450

Charles R. P. Brown
Attorney for Respondent
P. O. Box 1418
Fort Pierce, Florida, 33450

RECORD ON APPEAL

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IN THE SUPREME COURT OF THE
UNITED STATES

CASE NO.

STATE OF FLORIDA on the relation
of AUSTIN LLOYD and RUBY LLOYD,
his wife,

Petitioners

-vs-

THE CITY OF FORT PIERCE, a
municipal corporation,

Respondent

* * * * * * * * * * * * * * * * * * *

S T I P U L A T I O N

Comes now the Petitioners, STATE OF FLORIDA on the relation of AUSTIN LLOYD and RUBY LLOYD, his wife, through their undersigned attorney, PHILIP G. NOURSE and the Respondent, THE CITY OF FORT PIERCE, a municipal corporation, through its undersigned attorney, CHARLES R. P. BROWN, and pursuant to Rule 21 of Rules of the Supreme Court of the United States of 1967, stipulate that "all portions of the record may be omitted as unnecessary for the determination of the petition or of the writ, if it be granted", except the following facts which are a part of said record, to-wit:

1. That the Petitioners, AUSTIN LLOYD and RUBY LLOYD, his wife, are natural persons, citizens of the State of Florida, and of the United States of America, and are over the age of 21 years.

2. That the Respondent, THE CITY OF FORT PIERCE, is a municipal corporation duly organized and existing under the laws of the State of Florida.

3. That on the 8th day of August, 1968, the original litigation was commenced by the Petitioners filing a Petition for Issuance of Alternative Writ of Mandamus in the Nineteenth Judicial Circuit in and for St. Lucie County, State of Florida, Case No. 58-500, requiring the Respondent to issue to the Petitioners, a building permit for their proposed real estate improvement.

4. That on the 2nd day of December, 1968, the Alternative Writ of Mandamus was filed in Circuit Court Minute Book 51 at page 347 of the public records of St. Lucie County, Florida.

5. That on the 27th day of March, 1969, the return to the Alternative Writ of Mandamus was filed.

6. That the question posed for decision by the Circuit Court was the constitutionality of Section 106.2 of Municipal Ordinance #E-398 of the City of Fort Pierce, which among other things, recites as follows, to-wit:

"106.2 Qualification of Applicant.

(b) Application for (BUILDING) permits will be accepted ONLY from CONTRACTORS CURRENTLY licensed in their respective field and for whom no revocation or suspension of license is pending; except that a sole owner may make application for permit and supervise the work in connection with the construction, maintenance, alterations or repair of a single family residence or two family residence for his own use and occupancy and not intended for sale. The construction of more than one residence by an individual owner in any

12 month period shall be construed as contracting, and such owner shall then be required to be licensed as a contractor. Such licensed contractor or owner shall be held responsible to the building official for the proper supervision and conduct of all work covered thereby.

An owner of any building may make application for permit to repair, remodel any building when nonstructural work is involved." (Emphasis supplied)

7. That Petitioners own a small, single-story, flower shop located in a commercially zoned area, to which they desired to add a small, private, store room, and for which they sought the controversial building permit. Neither of the Petitioners hold a Contractor's License, but the Petitioner, AUSTIN LLOYD, has previously placed improvements on real estate in Fort Pierce, Florida, off and on for 30 years, either by doing the work himself or supervising the necessary craftsmen, who did the work involved. Mr. Lloyd, on these occasions, complied with the building codes and zoning ordinances in effect at the time of said construction and in this instance had procurred a zoning variance and was intending to comply with all building code requirements in effect, which included compliance with any sanitary or safety requirements set out in the codes.

8. That the sole obstacle preventing the Petitioner from obtaining this building permit, is the existence of the ordinance referred to above which requires anyone doing this type of work to hold a Contractor's License except as set forth in said ordinance in reference to single and two family residences. Mr. Lloyd is a business man of many years

standing who does not hold a Contractor's License and resents being required to employ a Contractor to do work that he could do himself on his own property.

9. That on the 28th day of January, 1970, this case was submitted on a Stipulation of Facts to the Circuit Court of St. Lucie County, Florida, for decision.

10. That on the 6th day of October, 1970, the Circuit Court through the Honorable C. Pfeiffer Trowbridge, discharged the Alternative Writ of Mandamus when he handed down the decision of the Court, a copy of which is attached hereto, marked Appendix "A", and by reference made a part hereof.

11. That on the 8th day of October, A.D. 1970, the lower court's decision was appealed to the Fourth District Court of Appeal in and for the State of Florida, it being the next highest Court in the State of Florida.

12. That on the 17th day of March, A. D. 1971, the Fourth District Court of Appeals of the State of Florida affirmed the Order of the Circuit Court dated October 6, 1971 and on April 27, 1971 issued its Mandate thereon, copies of which said Decision and Mandate are attached hereto, marked Appendix "B" and by reference made a part hereof.

13. That on or about the 11th day of May, A. D. 1971 a Petition for Writ of Certiorari was filed in the Supreme Court of Florida asking the said Court to reverse both lower courts.

14. That on the 22nd day of June, 1971, the decision of the Florida Supreme Court was filed in Circuit Court Minute Book 70 at page 400 of the public records of St. Lucie County, Florida, denying said Writ of Certiorari, a copy of said decision being attached hereto, marked Appendix "C" and by reference made a part hereof.

DATED this the 26th day of August, A. D. 1971.

Respectfully submitted,

Philip G. Nourse, Attorney for
Petitioners Austin Lloyd and
Ruby Lloyd, his wife
133-A North 4th Street
Fort Pierce, Florida, 33450

THE CITY OF FORT PIERCE

By Charles R. P. Brown

Charles R. P. Brown, Attorney for
Respondent
P. O. Box 1418
Fort Pierce, Florida, 33450

APPENDIX "A"

OPINION

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT, IN AND FOR ST. LUCIE COUNTY, FLORIDA
CASE NO. 68-500

STATE OF FLORIDA on the relation of AUSTIN LLOYD and RUBY LLOYD, his wife,

Plaintiff,

-vs-

THE CITY OF FORT PIERCE, a municipal corporation; et al,

Respondents.

ORDER

This cause came on to be heard October 6, 1970, upon the Alternative Writ of Mandamus and the Return thereto and the Court having duly considered the same;

IT IS ORDERED that, the ordinance in question not being unreasonable so as to be unconstitutional or invalid under the law, the Alternative Writ of Mandamus is discharged and the cause is dismissed.

DONE and ORDERED at Stuart, Florida, this October 6, 1970.

/s/ C. Pfeiffer Trowbridge
CIRCUIT JUDGE

Copies furnished:

Philip Nourse, Esq.
C.R.P. Brown, Esq.

FILED AND RECORDED
ST. LUCIE COUNTY, FLA.
RECORD VERIFIED
Circuit Ct. Min.
'70 OCT 8 AM 11:16
/s/ M. Neil
ROGER POITRAS
CLERK CIRCUIT COURT

Circuit Ct. Min. Book 65 page 39

APPENDIX "B"

MANDATE

from

DISTRICT COURT OF APPEALS OF THE STATE OF FLORIDA. No. 70-855 (No. 68-500)

FOURTH DISTRICT

TO THE HONORABLE, the JUDGES OF:
Circuit Court for the Nineteenth Judicial Circuit for the County of St. Lucie.

GREETINGS:

WHEREAS, lately, in a cause wherein:

STATE OF FLORIDA on the relation of AUSTIN LLOYD et ux., were Plaintiffs

and

THE CITY OF FORT PIERCE, etc., et al, were respondents

the Order of said court was rendered October 8, 1970, as appears by inspection of the record duly brought to the said District Court of Appeal by virtue of proceedings agreeable to law;

AND, WHEREAS, the said District Court of Appeal rendered its decision and judgment, a copy of which is attached

hereto and made a part hereof, on March 17, 1971;

THEREFORE, it is:

ORDERED that appellees do have and recover of and from appellants costs in this behalf expended; and

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as ought to be had, the said Order of the said Circuit Court notwithstanding.

WITNESS, The Honorable SPENCER C. CROSS, Chief Judge of the said District Court and the seal of said Court at West Palm Beach, this 27th day of April, 1971.

/s/ Evelyn R. Flack, Clerk
DISTRICT COURT OF APPEAL
FOURTH DISTRICT, FLORIDA

Seal of the District Court of Appeal

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT JANUARY TERM 1971 CASE NO. 70-855.

AUSTIN LLOYD and RUBY LLOYD his wife, Appellants,

v.

THE CITY OF FORT PIERCE, a municipal corporation; FRANK W. HOGAN, individually and as Building Official for the City of Fort Pierce; MILTON TUCKER, individually and as Mayor of the City of Fort Pierce; LEE S. NELSON, individually and as Commissioner of the City of Fort Pierce; JACKIE CAYNON, individually and as Commissioner of the City of Fort Pierce; SAM LAWDER, individually and as Commissioner of the City of Fort Pierce; MERLE E. MORRIS, individually and as Commissioner of the City of Fort Pierce,

Appellees.

Decision filed March 17, 1971.

Appeal from the Circuit Court for St. Lucie County; C. Pfeiffer Trowbridge, Judge.

Philip G. Nourse, Fort Pierce, for appellants.

Charles R. P. Brown of Brown and Alderman, Fort Pierce, for appellees.

PER CURIAM.

Affirmed.

WALDEN, REED and OWEN, JJ., concur.

FILED AND RECORDED
ST. LUCIE COUNTY, FLA.
RECORD VERIFIED
Circuit Ct. Min.
'71 APR 28 AM 8:07
/s/ M. Neil
ROGER POITRAS
CLERK CIRCUIT COURT

Circuit Ct. Min. Book 69 230

APPENDIX "C"

OPINION

IN THE SUPREME COURT OF
FLORIDA
JANUARY TERM, A. D. 1971
TUESDAY, JUNE 1, 1971

AUSTIN LLOYD and RUBY LLOYD, his wife,

Petitioners,

v.

THE CITY OF FORT PIERCE, a municipal corporation, et al.,

Respondents.

CASE NO. 41,127

68-500
DISTRICT COURT OF APPEAL,
FOURTH DISTRICT

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ROBERTS, C. J., ERVIN, CARLTON,

McCAIN and DEKLE, JJ., concur.

cc: Honorable Evelyn R. Flack,
Clerk
Honorable Roger Poitras,
Clerk
Honorable Philip G. Nourse
Messrs. Brown and Alderman

A True Copy

TEST:
/s/ Sid J. White
Clerk Supreme Court
(Supreme Court Seal)

FILED AND RECORDED
ST. LUCIE COUNTY, FLA.
RECORD VERIFIED
Circuit Ct. Min.
'71 JUN 22 PM 3:02
/s/ M. Neil
ROGER POITRAS
CLERK CIRCUIT COURT

Circuit Ct. Min Book 70 400

APPENDIX "D"

ARGUMENT, SUBMISSION AND DOCKET

CASE NO. 68 500

Re: ASSIGNED TO
JUDGE TROWBRIDGE, 1/1/69

ATTORNEYS	PARTIES	STYLE OF CASE
Philip Nourse	State of Fla. on the relation of Austin Lloyd & Ruby Lloyd, his wife,	
~~Spencer Gilbert~~ Charles R.P.Brown	vs. City of Ft. Pierce - et al.	Mandamus

DATE '68 PROGRESS OF CASE PAID 8-8-68 AMT 17--

Aug 8 Petition for Issuance Alternate write of Mandamus etc. docket Index.

9 Summons Issued: LIBRARY ASSESSMENT CHECK NO.1894
City of Ft. Pierce (Ser. 8-9-68)
Milton Tucker (Ser. 8-9-68)
Frank W. Hogan (Ser. 8-9-68)
Lee S. Nelson (Ser. 8-9-68)
Sam Lauder (Ser. 8-9-68)
Jackie Canyon (Ser. 8-9-68)
Merele E. Morris (Ser. 8-9-68)

" 15 Motion to quash Petition
15 Motion to Strike
26 Notice of Hearing
27 Notice of Taking Deposition
Sept 4 Order setting Pre-Trial Conf.
Oct 1 Deposition of Frank Hogan
Dec 2 Petition for Issuance of Atternative Writ et al
2 Order (cc MB 51 Pg. 346)
2 Alternative Writ of Mandamus (CCMB 51 Pg. 347)
17 Motion to Quash Petition for issuance of Alt. Writ, et al.
17 Motion to Strike
17 Motion to Strike Sham Pleadings
17 Motion to Disqualify Counsel
31 Notice of Hearing

1969
Jan 30 Order (CC MB 52 Pg. 453)
30 Letter to Spencer Gilbert from Philip G. Nourse
Feb 17 Motion To Strike
17 Motion to Quash Petition, et als.

DATE 1969	PROGRESS OF CASE
Mar 3	Notice of Hearing
18	Order Denying Motion to Quash & Motion to Strike (CC MB 54 Pg. 55)
27	Return
Aug 28	Motion to set trial
Dec 8	Order Setting Non Jury Case (2-2-70 #2-9:30 AM)
1970	
Jan 16	Motion & Notice of Withdrawal of Councel & Appearance of Counsel & Order (CC MB 59 Pg 358)
28	Stipulation of Facts
Feb 5	Memorandum of Law
Mar 3	Defendant's Brief
Oct 8	Order - dismissing (CC MB 65 Pg. 39)
8	Letter from Philip G. Nourse
8	Notice of Appeal (CC MB 65 Pg. 41)
8	Ctf. Copy of Notice of Appeal with check for $25.00 mailed to: Appellant Court, West Palm Beach, Fla.
9	Letter from Philip G. Nourse to Judge Trowbridge
9	Letter from Charles R.P. Brown to Judge Trowbridge
13	Assignment of Errors
13	Directions to Clerk
Oct 16	Letter from Appellant Court acknowledging receipt of $25.00 & Notice of Appeal
1971	
Jan 18	Stipulation
18	Order (Extending Time) (CC MB 67 Pg 167) (Ctf. Copy sent to Appellant Court)
22	Appeal File Mailed to Appellant Court - also Ctf. copy of Letter).
Apr 28	Mandate & Decision (CC MB 69 Pg 229)
Jun 22	Order from Supreme Court (CC MB 70 Pg. 400)

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT, IN AND FOR ST. LUCIE COUNTY, FLORIDA.
NO. 68-500

STATE OF FLORIDA on the relation of AUSTIN LLOYD and RUBY LLOYD, his wife,

Plaintiff,

-vs-

THE CITY OF FORT PIERCE, a municipal corporation, et al.,

Respondents.

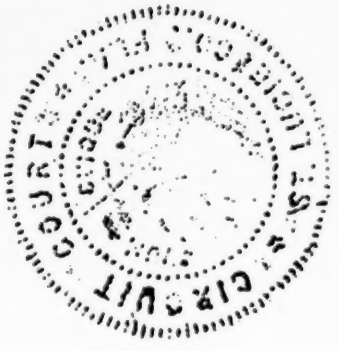
I, ROGER POITRAS, Clerk of the Circuit Court of the 19th Judicial Circuit, in and for St. Lucie County, Florida, do hereby certify that the foregoing pages contain a full, true and complete copy of the following papers: Stipulated Record, Argument, Submission and Progress Docket, Opinion of the Circuit Court of the Nineteenth Judicial Circuit in and for St. Lucie County, Florida; Mandate from the District Court of Appeals of the State of Florida; and Opinion from the Supreme Court of Florida;
in the above cause in this Court as full, true and complete as the originals of the same now remain in my office.

In Testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of the 19th Judicial Circuit in and for St. Lucie County, Florida, on this the

27th Day of August A. D. 1971.

ROGER POITRAS, Clerk of the
Circuit Court of the 19th
Judicial Circuit in and for
St. Lucie County, Florida.

By Roger Poitras



CERTIFICATE OF SERVICE

I hereby certify that copies of this Stipulated Record on Appeal have been served upon, CHARLES R. P. BROWN, Attorney for the Respondent, City of Fort Pierce, Post Office Box 3779, Fort Pierce, Florida, 33450, and upon the Circuit Court of the 19th Judicial Circuit, in and for St. Lucie County, Florida, St. Lucie County Court House, Fort Pierce, Florida, 33450; THE DISTRICT COURT OF APPEAL FOURTH DISTRICT OF FLORIDA, P. O. Box A, West Palm Beach, Florida, and to THE SUPREME COURT OF FLORIDA, Supreme Court Building, Tallahassee, Florida, by mail on this the 15th day of September A.D. 1971, in accordance with Rule #33 of the United States Supreme Court Rules.

Philip G. Nourse
Attorney for Petitioners
133-A North 4th Street
Fort Pierce, Florida, 33450

SUPREME COURT, U. S.
SEP 17
E. ROBERT

In the

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-3341

STATE OF FLORIDA on the relation of AUSTIN LLOYD and RUBY LLOYD, his wife,

Petitioners,

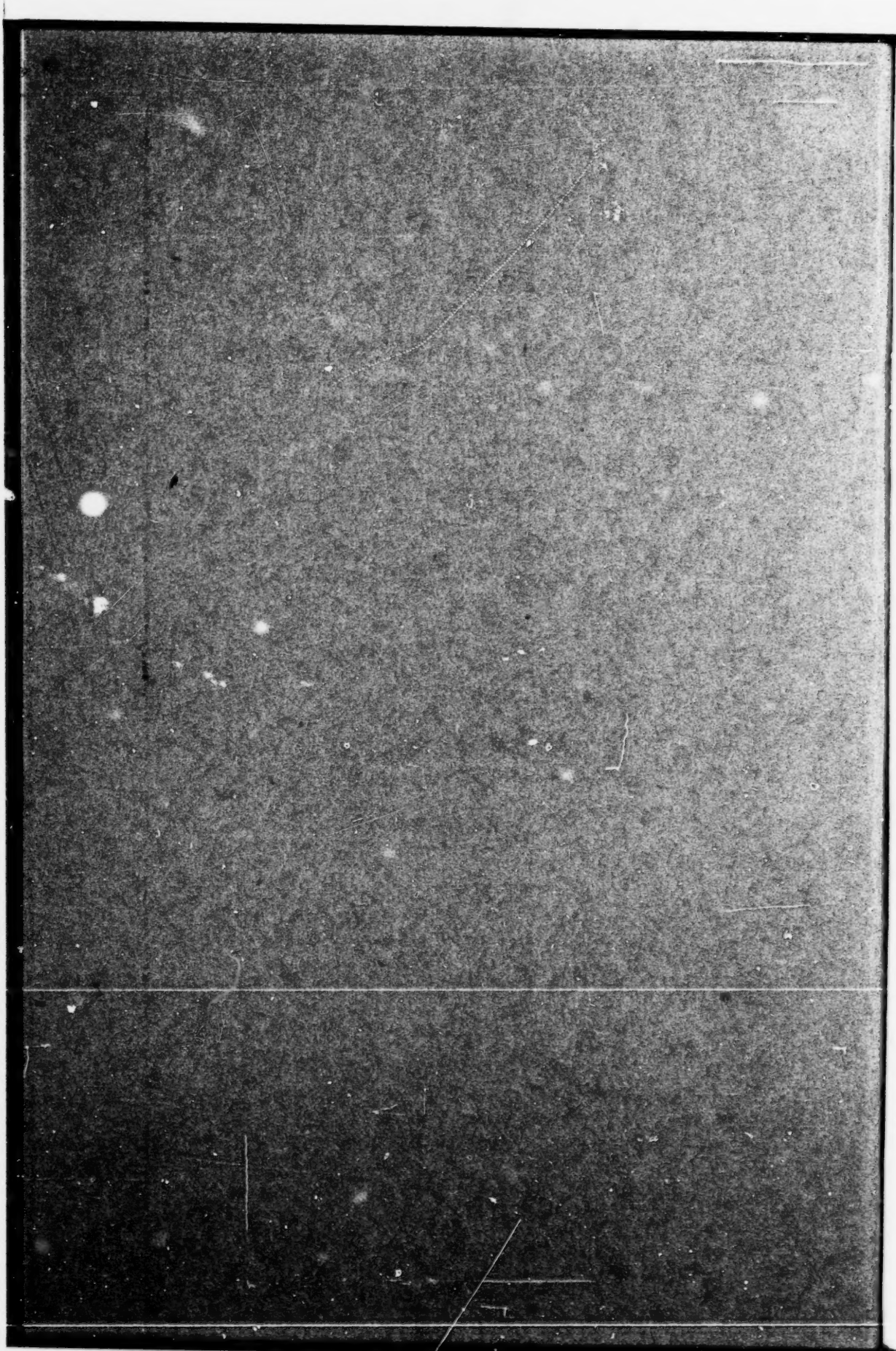
-vs-

THE CITY OF FORT PIERCE, a municipal corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT IN AND FOR ST. LUCIE COUNTY, FLORIDA.

PHILIP G. NOURSE
133-A North 4th Street
Fort Pierce, Florida, 33450
Counsel of Record for Petitioners



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In the Supreme Court of the United States

OCTOBER TERM, 1971

No.

STATE OF FLORIDA on the relation of AUSTIN LLOYD and RUBY LLOYD, his wife,

Petitioners,

-vs-

THE CITY OF FORT PIERCE, a municipal corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR ST. LUCIE COUNTY, FLORIDA.

Petitioners, pursuant to Rule 19 of the Rules of the Supreme Court of the United States, pray that a writ of certiorari issue to review the judgment of the Circuit Court of the Nineteenth Judicial Circuit in and for St. Lucie County, Florida, entered in the above

entitled case on October 6th, 1970, and appealed to the Fourth District of Appeal who decided the appeal on April 27th, 1971, and then appealed to the Supreme Court of the State of Florida, who in turn refused to hear the case on June 22nd, 1971.

CITATIONS TO OPINIONS BELOW

The opinion of the Circuit Court is printed as Appendix "A" hereto.

The decision of the Fourth District Court of Appeal is printed as Appendix "B" hereto.

The denial of the Supreme Court of the State of Florida, is printed as Appendix "C" hereto.

QUESTIONS PRESENTED FOR REVIEW

1. Do the Petitioners, Austin Lloyd and Ruby Lloyd, his wife, have the constitutional right to construct minor

improvements on their own real property as long as they comply with the local Zoning Ordinances and Building Codes, without having to hire a Contractor to do this construction for them in a commercially zoned area?

2. Is a Municipal ordinance discriminatory under the 14th Amendment and violating the Bill of Rights of the United States Constitution, when in one breath it allows a citizen to build himself only one house per year in residentually zoned areas and which in the next breath prohibits a citizen from constructing any improvement whatsoever (no matter how trivial) on his realty, if the realty is in a commercially zoned area, unless said citizen employs a licensed contractor to do the work for him?

ORDINANCE INVOLVED

Section 106.2 of Municipal Ordinance #E-398 of the City of Fort Pierce denying building permits to Petitioners for the construction involved recites as follows, to-wit:

> "106.2 Qualification of Applicant.
>
> (b) Application for (BUILDING) permits will be accepted ONLY from CONTRACTORS CURRENTLY licensed in their respective field and for whom no revocation or suspension of license is pending; except that a sole owner may make application for permit and supervise the work in connection with the construction, maintenance, alterations or repair of a single family residence or two family residence for his own use and occupancy and not intended for sale. The construction of more than one residence by an individual owner in any 12 month period shall be construed as contracting, and such owner shall then be required to be licensed as a contractor. Such licensed contractor or owner shall be held responsible to the building official for the proper supervision and conduct of all work covered thereby."
>
> (Emphasis supplied.)

STATEMENT OF THE CASE

AUSTIN LLOYD and RUBY LLOYD, his wife, citizens of the City of Fort Pierce, Florida (for about forty years) filed on August 8th, 1968, a Petition for an Alternative Writ of Mandamus to compel the City of Fort Pierce, Florida, to issue them a building permit for the construction of a small addition on the back of their flower shop. Prior to the seeking of this building permit, Petitioners had obtained a zoning variance and the necessary plans and specifications which had been approved by the City. The officials of the City of Fort Pierce (Respondent) refused to issue a building permit for this rather insignificant construction on the sole ground that Mr. Lloyd did not have a contractor's license as required by the City Ordinance. The contemplated construction was a small

room on the back of their flower shop approximately 15' x 15' to be covered by the usual pitch and gravel roof, with a floor of poured concrete. No plumbing was required and only one additional electrical circuit was to be installed.

Mr. Lloyd had built numerous other buildings in conformity with the building codes in existence, off and on during his residency over the last forty years in the City of Fort Pierce, prior to the enactment of this ordinance. During this time, there had been no problems of public health or public safety because of Mr. Lloyd doing his own construction.

Mr. Lloyd alleged that this ordinance was a "make-work ordinance" for unemployed contractors and created an unnecessary expense for individual citizens competent and desirous of doing

work for themselves!

This same ordinance allows an individual owner to obtain a building permit without hiring a contractor for one residential house a year, but for no more than one house per year, irrespective of whether or not the owner held a contractor's license! The contemplated addition on the flower-shop would amount to an ordinary storeroom in an ordinary residential house, having no structural, plumbing, or electrical problems whatsoever. In the courts below, Petitioners contended that this ordinance was unreasonable and discriminatory and denied to them their constitutional property rights as well as violating the rights of equal protection of the laws due to the distinction between one residence per year and no commercial property per year.

The trial court (Circuit Court of

the Nineteenth Judicial Circuit in and for St. Lucie County, Florida) stated in effect, that the ordinance was not quite unreasonable enough to be unconstitutional. The Fourth District Court of Appeal affirmed the lower court. The Supreme Court of the State of Florida declined to take jurisdiction.

REASONS FOR GRANTING THE WRIT

The Petitioners feel that the Petition for the Writ of Certiorari should be granted because their civil rights have been violated by the building officials of the City of Fort Pierce.

In 62 CJS on page 410, the author in referring to the right of the citizen to have a building permit from a governmental authority states, to-wit:

"a. In General

A municipal corporation may have authority to promulgate reasonable regulations with respect to the

> construction, maintenance and repair of buildings but power must be exercised within its scope for the promotion of the public health, safety, or general welfare, and it may not be exercised arbitrarily.
>
> As a general rule, a municipal corporation has no inherent power to interfere arbitrarily with the common-law rights of real estate proprietors in the use and improvement of their property by the construction and maintenance of buildings and structures thereon. However, some measure of authority for buildings regulations is found to reside in nearly every municipal corporation. The supervision of the construction, maintenance, and repair of buildings falls within the scope of the state's inherent police power which may be delegated by the state to a municipal corporation, as by a statute expressly authorizing a municipality to promulgate building regulations, and the exercise of such authority over buildings may constitute a proper exercise of the municipal police power." (Emphasis supplied)

Petitioners contend under the law cited above that they have an inherent constitutional right, both in the Constitution and in the Common Law, to personally construct this storeroom on the back

of their flowershop as long as they comply with the City of Fort Pierce building code.

Looking next to the Florida law on the subject, let us look to the statement made on constitutional law in 6, Florida Jurisprudence at page 455 in Section 226, wherein the author states, to-wit:

> "The ownership of property is guaranteed by both the State and Federal Constitutions, and has been termed a sacred right and not a privilege. It has been said that there is no greater safeguard to the perpetuity of our republic and traditions and institutions than the responsibility of property ownership.
>
> The Constitution of the United States provides that neither Congress nor the States may deprive any person of property without due process of law. The Florida Declaration of Rights provides that all men have the inalienable right of acquiring, processing, and protecting property, and that no person may be deprived of property without due process of law. These provisions securing defined

> property rights against invasion by state authority are limitations upon the lawmaking power of the Legislature as well as upon the powers of the other departments of the state government."

Property rights of a citizen however are subject to certain limitations as explained in Section 229 on page 459 of Florida Jurisprudence, that recites as follows:

> "The rights of acquiring, possessing, and protecting property is not an absolute right. Organic property rights relate to those that recognized by law and such rights are subject to sovereign governmental regulations within the limitations prescribed by definite provisions of the Constitution. The constitutional protection afforded property rights does not extend to property used in violation of criminal laws and is not infringed by valid governmental regulations concerning the use of property employed in rendering public service. Moreover, the use of property may be regulated or limited in behalf of the general welfare of the public.
>
> Aside from specific constitutional limitations, private property is subject to the limitations expressed in the maxi 'sic utere tuo ut non alienum laedas',

and to three rights of government;
(1) the right of eminent domain,
(2) the right of taxation, and
(3) the right of the police power."

When these limitations come into conflict with property rights, the author in 6 Florida Jurisprudence (Constitutional Law) page 427, Section 192 states:

> "From its very nature, the exercise of police power clashes with the full enjoyment of property by its owner, but in the interests of the public welfare a property owner must submit to reasonable regulations and limitations upon the use of his property, and in matters of such character, when private interests and public welfare conflict, the former must give way to the latter. All property rights are held and enjoyed subject to the fair exercise of the police power to establish regulations that are REASONABLE necessary to secure the general welfare of the state. The constitution does not secure property rights against reasonable and just statutory regulations, restraints, and prohibitions duly administered to conserve the best interests of the public affected by the regulations. The constitutional rights to acquire, possess, and protect property relates to such subjects of property as persons may acquire and have in

possession under lawful regulations necessary to serve the general welfare; and such regulations may limit the subject of property as to kind or quantity, either or both or as to the manner or place of possession, when expedient for the common good, and when due process and equal protection of the laws are not denied to any person by the regulations. Considerations of financial loss or of so-called "vested rights" in private property are insufficient to outweigh the necessity for legitimate exercise of the police power.

The Constitutions, state and federal, SECURE PROPERTY RIGHTS AGAINST ARBITRARY AND OPPRESSIVE GOVERNMENTAL RESTRAINT, AND INTERFERENCE WITH CONSTITUTIONAL GUARANTIES CAN BE JUSTIFIED ONLY WHERE THE WELFARE OF THE PUBLIC OUTWEIGHTS THE IMPORTANCE OF THE INDIVIDUAL. MOREOVER, INTERFERENCE WITH THE FULL ENJOYMENT OF PROPERTY BY ITS OWNER UNDER THE POLICE POWER IS JUSTIFIABLE ONLY IF THE NEED FOR INTERFERENCE IS CLEAR. (Emphasis supplied)

Having briefed the basic law of our country we move into the narrow field of applying municipal ordinances to paramount and superior law as set out in our Constitutions.

A good explanation of this is found in 23, Florida Jurisprudence (Municipal Corporations) Sections 99 and 100, pages 122 and 123 that recites:

> "POWER AND DUTY OF COURTS GENERALLY. The Legislative acts of municipal corporations may be inquired into by the Courts to determine whether they are legally exercised within the municipality's power, or consummated through fraud or over-reaching. This is true whether the municipality acts in the form of an ordinance or in a resolution. SINCE THE UNREASONABLENESS OF ORDINANCES MAY BE GROUND FOR THEIR INVALIDATION, ordnances passed under general or implied power must be found by the Courts to be reasonable; otherwise they will be held to be void. In such cases, the reasonableness is a judicial question which may be determined by the Court.
>
> DETERMINATION of REASONABLENESS MATTERS CONSIDERED:
> In the determination of the reasonableness or unreasonableness of municipal ordinances, the Courts may settle the questions by inspection of the ordinances on their face. An ordinance may be found unreasonable by a state of facts which affects its operation. It may be adjudged reasonable as applied to one state of facts and unreasonable when applied to

circumstances of a different character." (Emphasis supplied)

Speaking of invalidating an ordinance because it is unreasonable upon its face, let us look at the ordinance involved of the City of Fort Pierce being attacked (Ordinance E-398, Section 106.2) which recites as follows, to-wit:

"106.2 Qualifications of Applicant,

(b) Application for permits will be accepted only from contractors currently licensed in their respective field and for whom no revocation or suspension of license is pending; except that a sole owner may make application for permit and supervise the work in connection with the construction, maintenance, alterations or repair OF A SINGLE FAMILY RESIDENCE or two family residence FOR HIS OWN USE AND OCCUPANCY AND NOT INTENDED FOR SALE. The construction of more than one residence by an individual owner in any 12 month period shall be construed as contracting, and such owner shall then be required to be licensed as a contractor. Such licensed contractor or owner shall be held responsible to the building official for the proper supervision and conduct of all work covered

thereby. (Emphasis supplied)

We therefore find that while an owner of property HAS TO HIRE A CONTRACTOR to build a storeroom on the back of a flowershop, he is permitted to build an entire home (providing he builds no more than one a year.) The safety and sanitation of a home certainly is as important as the building of a storehouse on the back of a flowershop, yet an ordinary owner is permitted to do the former and not permitted to do the latter! (In this way the "hungry, over-charging" contractors can get all of the commercial jobs in town!) Obviously if you can build a house according to the building code, you can surely build a storeroom for each house has several storerooms! Projecting this thinking one step further, suppose you wanted to build a doghouse in the back of your flowershop? Anybody can build

doghouse, so why would it be necessary to hire a contractor to build a doghouse? Petitioners contend the ordinance is unreasonable, discriminatory, and violates the equal protection of the laws provision of the 14th Amendment of the United States Constitution, as well as the corresponding section of the State Constitution.

If support is needed for the Florida law, we could turn to 62 CJS, wherein on page 372, Section 7 it discusses the judicial supervision of power generally, and the determination of <u>REASONABLENESS</u> of action.

Here the Court states:

"However, the courts may give relief in exceptional circumstances as in the case of a manifest and palpable abuse of power, an unwarranted invasion of private rights, or an arbitrary, captricious, or excessive act....."

"The Courts, however, may grant relief from the exercise by the

> municipality of a power expressly granted if such exercise interfers or violates the private or organic rights of individuals, even though the power has been lawfully conferred....."

Then on page 374, it is stated:

> "However, discretionary action on the part of a municipality is subject to judicial review where the action is manifectly arbitrary or the discretion is clearly abused, whether such action is within or without the limits of its discretionary powers."

AS TO CASES ON THIS MATTER, the writer has been unable to find any! As to the question of the ordinance discriminating per se -- where it allows an owner to build himself a private house once a year, but no commercial construction at all, it is discriminatory! Where it allows an owner to build ONLY ONE house per year (another obvious discrimination) the writer thinks the case of Betty June School, Inc. vs Young, 201 NY Supplement 2nd, 692 (1960)

is helpful and illustrative of the problem. In this case the building code provided for steel beams in schools, certain types of fences and rules for number of pupils per room. In the case it was admitted in the pleadings that the ordinance was not being enforced against parochial schools but was being enforced against private schools (pp696). Here is an illustration of internal discrimination for the code required a "STOCKADE" fence to the exclusion of a "CHAIN LINK" fence (where it is common knowledge that the latter would be more effective as a safety measure). (pp 700) The ISSUE here is "PUBLIC SAFETY" as it is in the case at issue. You cannot exclude one safe building (nor builder) because you might prefer another type of safe building (or builder)-------THE ISSUE IS THAT THE LAW REQUIRES THE

BUILDING (OR FENCE) (OR BUILDER) be within the standards of safety required by the building code.

Another analogy is allowing a defendant to represent himself in the Small Claims Court or in a Criminal Court. The law does not (and should not) require a person in Court to hire a lawyer. Occasionally a person defending himself does better than if he had hired a lawyer. He is (and should be) required to follow the same time-tested rules of procedure as the attorney, since material failure to follow the rules results in a miscarrage of justice, just as failure to conform to the building code results in an unsafe building.

As long as the building codes (or rules of Court) are followed, then it matters not whether Austin Lloyd builds a house, storeroom, or doghouse!!

The codes are designed for public health and public safety (just as the rules of Court are designed for justice.) Similarily, if Mr. Lloyd wants to build two houses a year or two storerooms a year, or one house and one storeroom per year, the issue is not the number or type of buildings but SAFETY, SAFETY, SAFETY! The Codes provide for safety!

The Petitioner over the last two years has without success sought for other cases in the United States on the subject of denying a competent person the right to build upon his own property (without having to hire a contractor to do the work for him). There is no law compelling a citizen to hire a contractor architect or lawyer in the event the citizen is both desirous and competent to do the work himself on his own property. Petitioners submit that the time has come

in our jurisprudence for this Court to terminate this discrimination of private property rights of our citizens, in order that we continue to move forward, for here it is obvious that a special interest group (the Fort Pierce Contractors) should not be permitted to prevent industrious, hard working citizens from doing anything that they are competent to do for themselves, as long as they do not interfere with the rights of anyone else. Throughout this case, the issue has been confined to the question of WHETHER OR NOT a contractor MUST be employed; it already having been settled that the Petitioners have complied with all other requirements of the municipality and would in the construction process, comply with all requirements of the municipality as to the type of constructions required by the building code.

CONCLUSION

The RIGHT TO PRIVATE PROPERTY springs from the TEN COMMANDMENTS. It is a basic human right. "Thou Shalt Not Steal" - - "Thou shalt not covet thy neighbor's house,.....nor anything that is thy neighbor's". No where in the Ten Commandments do you find anything excluding contractors in need of employment!!!

The RIGHT TO PRIVATE PROPERTY is the cornerstone of the American Constitution - - "Life, Liberty, and Property". Chief Justice Edward W. White said of them, "They are individually united, and one cannot be destroyed without the other....."

The COMMUNIST MANIFESTO is in strict conflict with the United States Constitution. It openly advocates the abolition of private property. That

means the government (in this case, the City) takes over.

Atomized in the cornerstone of the Constitutions of this land is the right of private ownership of property; so much so that even slavery was unheld until the Constitution was amended. Paul Blakewell, in his book Curious Errors about Money, recounts that Dred Scott, a slave and the PROPERTY of some owner, fled to Missouri, which had passed a law against slavery. The Supreme Court of the United States states that as long as the Constitution recognized the slave as private property, any law nullifying that right, was void. The slave had to be returned to its owner. The Court said "the only power conferred upon government is THE POWER COUPLED WITH THE DUTY OF GUARDING AND PROTECTING THE OWNER OF HIS RIGHTS."(Emphasis

supplied.)

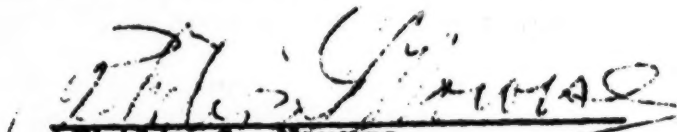
There is no constitutional amendment restricting Petitioners' constitutional, common law and civil right of placing safe and sanitary improvements upon his private property himself.

Any Municipal employee, city official, state charter, Florida Statute, Florida Constitution or Federal Statute that violates this common, civil and constitutional right must be declared null and void as well as unconstitutional by <u>those of us who not only have sworn to uphold, but believe in the right of private property</u>. Otherwise, we fall to the theory of the <u>Communist Manifesto</u>!!!

Let us unanimously reject the Communist Manifesto by expousing and

championing the Ten Commandments!

Respectfully submitted on this the 14th day of September, A. D. 1971.



Philip G. Nourse
Attorney for Petitioners
133-A North 4th Street
Fort Pierce, Florida, 33450

APPENDIX "A"

OPINION

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT, IN AND FOR ST. LUCIE COUNTY, FLORIDA
CASE NO. 68-500

STATE OF FLORIDA on the relation of AUSTIN LLOYD and RUBY LLOYD, his wife,

Plaintiff,

-vs-

THE CITY OF FORT PIERCE, a municipal corporation; et al,

Respondents.

ORDER

This cause came on to be heard October 6, 1970, upon the Alternative Writ of Mandamus and the Return thereto and the Court having duly considered the same;

IT IS ORDERED that, the ordinance in question not being unreasonable so as to be unconstitutional or invalid under the law, the Alternative Writ of Mandamus is discharged and the cause is dismissed.

DONE AND ORDERED at Stuart, Florida, this October 6, 1970.

/s/ C. Pfeiffer Trowbridge
CIRCUIT JUDGE

Copies furnished:

Philip Nourse, Esq.
C.R.P. Brown, Esq.

FILED AND RECORDED
ST. LUCIE COUNTY, FLA.
RECORD VERIFIED
Circuit Ct. Min.
'70 OCT 8 AM 11:16
/s/ M. Neil
ROGER POITRAS
CLERK CIRCUIT COURT

Circuit Ct. Min. Book 65 page 39

APPENDIX "B"

MANDATE

from

DISTRICT COURT OF APPEALS OF THE STATE OF FLORIDA. No. 70-855 (No. 68-500)

FOURTH DISTRICT

TO THE HONORABLE, the JUDGES OF:
Circuit Court for the Nineteenth Judicial Circuit for the County of St. Lucie.

GREETINGS:

WHEREAS, lately, in a cause wherein:

STATE OF FLORIDA on the relation of AUSTIN LLOYD et ux., were Plaintiffs

and

THE CITY OF FORT PIERCE, etc., et al, were respondents

the Order of said court was rendered October 8, 1970, as appears by inspection of the record duly brought to the said District Court of Appeal by virtue of proceedings agreeable to law;

AND, WHEREAS, the said District Court of Appeal rendered its decision and judgment, a copy of which is attached

hereto and made a part hereof, on March 17, 1971;

THEREFORE, it is:

ORDERED that appellees do have and recover of and from appellants costs in this behalf expended; and

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as ought to be had, the said Order of the said Circuit Court notwithstanding.

WITNESS, The Honorable SPENCER C. CROSS, Chief Judge of the said District Court and the seal of said Court at West Palm Beach, this 27th day of April, 1971.

/s/ Evelyn R. Flack, Clerk
DISTRICT COURT OF APPEAL
FOURTH DISTRICT, FLORIDA

Seal of the District Court of Appeal

Circuit Ct. Min. Book 69 229

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT JANUARY TERM 1971 CASE NO. 70-855.

AUSTIN LLOYD and RUBY LLOYD his wife, Appellants,

v.

THE CITY OF FORT PIERCE, a municipal corporation; FRANK W. HOGAN, individually and as Building Official for the City of Fort Pierce; MILTON TUCKER, individually and as Mayor of the City of Fort Pierce; LEE S. NELSON, individually and as Commissioner of the City of Fort Pierce; JACKIE CAYNON, individually and as Commissioner of the City of Fort Pierce; SAM LAWDER, individually and as Commissioner of the City of Fort Pierce; MERLE E. MORRIS, individually and as Commissioner of the City of Fort Pierce,

Appellees.

Decision filed March 17, 1971.

Appeal from the Circuit Court for St. Lucie County; C. Pfeiffer Trowbridge, Judge.

Philip G. Nourse, Fort Pierce, for appellants.

Charles R. P. Brown of Brown and Alderman, Fort Pierce, for appellees.

PER CURIAM.

Affirmed.

WALDEN, REED and OWEN, JJ., concur.

FILED AND RECORDED
ST. LUCIE COUNTY, FLA.
RECORD VERIFIED
Circuit Ct. Min.
'71 APR 28 AM 8:07
/s/ M. Neil
ROGER POITRAS
CLERK CIRCUIT COURT

Circuit Ct. Min. Book 69 230

APPENDIX "C"

OPINION

IN THE SUPREME COURT OF
FLORIDA
JANUARY TERM, A. D. 1971
TUESDAY, JUNE 1, 1971

AUSTIN LLOYD and RUBY
LLOYD, his wife,

Petitioners,

v.

THE CITY OF FORT PIERCE,
a municipal corporation,
et al.,

Respondents.

CASE NO. 41,127

68-500
DISTRICT COURT
OF APPEAL,
FOURTH DISTRICT

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ROBERTS, C. J., ERVIN, CARLTON,

McCAIN and DEKLE, JJ., concur.

cc: Honorable Evelyn R. Flack,
Clerk
Honorable Roger Poitras,
Clerk
Honorable Philip G. Nourse
Messrs. Brown and Alderman

A True Copy

TEST:
/s/ Sid J. White
Clerk Supreme Court
(Supreme Court Seal)

FILED AND RECORDED
ST. LUCIE COUNTY, FLA.
RECORD VERIFIED
Circuit Ct. Min.
'71 JUN 22 PM 3:02
/s/ M. Neil
ROGER POITRAS
CLERK CIRCUIT COURT

Circuit Ct. Min Book 70 400

I HEREBY CERTIFY that a copy of the foregoing Petition for Writ of Certiorari was furnished to Hon. Charles R. P. Brown, Attorney for Respondent, P. O. Box 1418, Fort Pierce, Florida, 33450 and to Hon. Roger Poitras, Clerk of the Circuit Court, St. Lucie County Court House, Fort Pierce, Florida; and to Hon. Evelyn R. Flack, Clerk of the Fourth District Court of Appeals, P. O. Box A, West Palm Beach, Florida, 33402, and to the Hon. Sid J. White, Clerk of the Supreme Court of the State of Florida, Supreme Court Building, Tallahassee, Florida, by mail on this the 15th day of September, A. D. 1970.

Philip D. Nourse
Attorney for Petitioners
133-A North 4th Street
Fort Pierce, Florida,
33450

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Supreme Court, U.S.
FILED
SEP 30 1971
ROGERS C.B. MORTON, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-394

STATE OF FLORIDA on the relation of AUSTIN LLOYD and RUBY LLOYD, his wife,

Petitioners,

-vs-

THE CITY OF FORT PIERCE, a municipal corporation,

Respondent.

SUPPLEMENTAL BRIEF

PHILIP G. NOURSE
Attorney for Petitioners
133-A North 4th Street
Fort Pierce, Florida, 33450

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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-394

STATE OF FLORIDA on the relation of AUSTIN LLOYD and RUBY LLOYD, his wife,

Petitioners,

-vs-

THE CITY OF FORT PIERCE, a municipal corporation,

Respondent.

SUPPLEMENTAL BRIEF

Comes now AUSTIN LLOYD and RUBY LLOYD, his wife, through their undersigned attorney, and pursuant to Rule 24, paragraph 5. of the Rules of the Supreme

Court of the United States, and files this their Supplemental Brief, calling to the attention of the Court other intervening matter not available at the time of the filing of the Petition for Writ of Certiorari, and states, to-wit:

1. That the entry of the decision of the Supreme Court of Florida was not until June 22nd, 1971, when it was filed in the Trial Court (Circuit Court of the 19th Judicial Circuit in and for St. Lucie County, Florida), notwithstanding the fact that the opinion was dated June 1st, 1971. The reason for this was probably to allow for the ten day period for a petition for rehearing or to allow the rentention of jurisdiction for the assessment of costs,

pursuant to Rule 4.5C (6) of the Florida Supreme Court Rules, which states as follows, to-wit:

> "When the case is finally disposed of by the Supreme Court, the Court may order a certified copy of such record, or of the part thereof which the Court deems necessary, filed in the Supreme Court before the original record is returned to the district court of appeal and shall assess the costs thereof in such order."

2. That it was necessary, due to this confusion for counsel herein involved to prepare the"STIPULATED RECORD" since the original record had not been returned to the trial court and STILL has not been so returned, as is evidenced by the letter from the Clerk of the Circuit Court, a copy of

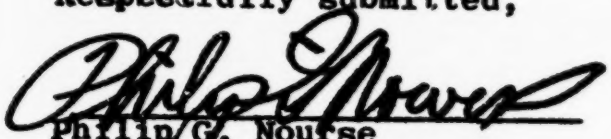
which is attached hereto, marked Appendix "A", and by reference made a part thereof.

3. That the Petition for Writ of Certiorari is hereby amended to request that it be also directed to the District Court of Appeal, Fourth District in the event the United States Supreme Court desires to deal with the Fourth District Court of Appeals in and for the State of Florida rather than the trial court from whom relief must be obtained. The reason for the original request being directed to the trial court was to "speed up" the administration of justice, for "justice delayed is justice denied". In the event the United States Supreme Court

does not approve of the original approach, then these Petitioners would appreciate the alternative approach.

DATED this the 27th day of September, A. D. 1971.

Respectfully submitted,



Philip G. Nourse
Attorney for Petitioners
133-A North 4th Street
Fort Pierce, Florida,
33450

APPENDIX "A"

LETTER

ROGER POITRAS
Clerk of Circuit Court
Saint Lucie County
Drawer 700
Fort Pierce, Florida

September 23, 1971

Philip G. Nourse
133-A North 4th Street
Fort Pierce, Florida 33450

In Re: State of Florida
on the relation of
AUSTIN LOYD and RUBY
LLOYD, his wife vs.
THE CITY OF FORT PIERCE
a municipal corporation
Our Case No. 68-500 -
Appeal Case No. 70-855

Dear Mr. Nourse:

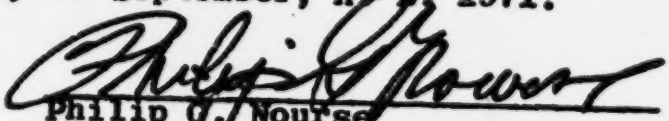
This is to inform you that to date we have not received the above named file back from the Appellant Court.

Yours very truly,

ROGER POITRAS, Clerk
By /s/ Mary Neil, DC

mn

I HEREBY CERTIFY that a copy of the foregoing Supplemental Brief was furnished to Hon. Charles R. P. Brown, Attorney for Respondent, P. O. Box 1418, Fort Pierce, Florida, 33450; and to Hon. Roger Poitras, Clerk of the Circuit Court, St. Lucie County Court House, Fort Pierce, Florida; and to Hon. Evelyn R. Flack, Clerk of the Fourth District Court of Appeals, P. O. Box A, West Palm Beach, Florida, 33402, and to the Hon. Sid J. White, Clerk of the Supreme Court of the State of Florida, Supreme Court Building, Tallahassee, Florida,32304, by mail on this the 28th day of September, A. D. 1971.



Philip C. Nourse
Attorney for Petitioners

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Supreme Court, U.S.
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OCT 22 1971
E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-394

STATE OF FLORIDA on the relation of AUSTIN LLOYD and RUBY LLOYD, his wife,

Petitioners,

-vs-

THE CITY OF FORT PIERCE, a municipal corporation,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Charles R. P. Brown
Attorney for Respondent
301 South Sixth Street
P. O. Box 1418
Fort Pierce, Florida 33450

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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-394

STATE OF FLORIDA on the relation of AUSTIN LLOYD and RUBY LLOYD, his wife

Petitioners,

-vs-

THE CITY OF FORT PIERCE, a municipal corporation,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, pursuant to Rule 24 of the Rules of the Supreme Court of the United States, 1971, prays that this Court deny Petitioner's Petition for

Writ of Certiorari to the Circuit Court of the Nineteenth Judicial Circuit in and for St. Lucie County, Florida based on the following:

1. That there is no statement of grounds on which this Court's jurisdiction is invoked by Petitioners. (Rule 23, Section 1 (b), Rules of the Supreme Court of the United States, 1971.)

2. That no statutory provision is cited which confers jurisdiction on this Court to review the judgment or decree in question by Writ of Certiorari. (Rule 23, Section 1 (b)-(iii), Rules of the Supreme Court of the United States, 1971.)

3. That there are no cites of

the constitutional provisions involved. These are required to be cited verbatim with the volume and page where found in the official edition. (Rule 23, Section 1(d) Rules of the Supreme Court of the United States, 1971.)

4. That Petitioner fails to show at what stage in the proceedings in the Court of the first instance, and in the appellate court, the federal question sought to be reviewed was raised. Petitioner has failed to show in what manner any federal question was raised as required. Petitioner, in fact, has failed to show in his Petition that <u>any federal question</u> was timely and properly raised so as to give this court jurisdiction to review

the judgment on Writ of Certiorari. (Rule 23, Section 1(f) Rules of the Supreme Court of the United States, 1971.)

5. That Petitioner has failed to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration as required by Rule 23, Section 4, Rules of the Supreme Court of the United States.)

6. That rather than a jurisdictional brief, as a Petition for Certiorari is, Petitioner has tried to argue the merits of his case without a showing that this Court has jurisdiction. Rule 41, Section 1, of the Rules

of the Supreme Court of the United States shows that "appellant or petitioner shall file with the Clerk forty (40) copies of his printed brief on the merits, within forty-five days of the order noting or postponing probable jurisdiction or of the order granting the Writ of Certiorari." (emphasis supplied) Because jurisdiction itself is at issue, Petitioner is premature in arguing any merits his case might have.

Here, Petitioner has tried to argue his cause on the merits in a jurisdictional brief. Under the guise of "facts", Petitioner has given arguments and conclusions of law none of which has any place in a brief of a jurisdictional nature and certainly has

nothing whatsoever to do with this Court's power to review the final judgment in question.

7. That in the event Petitioner's arguments to the merits were considered, he has wholly failed to distinguish between buildings built as private residences and those built as commercial establishments open to the public. There is a greater danger of public injury due to faulty construction in a public building (such as Petitioner's flower shop) for the simple reason that more people have access to public buildings. One way the public can be protected is to require that a person constructing a public building or making structural

repairs to such a building, be a qualified builder. A builder's qualification is determined by examination and licensing. It would be absurd to say that every land owner is a qualified builder. If every land owner were allowed to do his own construction of buildings which are open to the public, the results could be disastrous. It is true that the ordinance makes an exception as to residences not intended for sale. Since a private residence is not normally open to the public, the potential danger to the public at large is not as great.

The lesser public danger in residential construction justifies the distinction made by the ordinance.

In summary, Respondent respectfully contends that Petitioner has shown no basis for this Court's jurisdiction in the above styled cause; that such a showing is required by Rule 23 of the Rules of the Supreme Court of the United States, 1971 as cited above; that even if Petitioner's arguments to the merits were considered they are ill founded in fact and law and, therefore, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Charles R. P. Brown,
Attorney for Respondent
301 South Sixth Street
P. O. Box 1418
Fort Pierce, Florida 33450

CERTIFICATE OF SERVICE

I HEREBY certify that a copy of the foregoing Respondent's Brief in Opposition To Petition For Writ of Certiorari was furnished to Hon. Philip G. Nourse, Attorney for Petitioners, 133-A North 4th Street, Fort Pierce, Florida, 33450 and to Hon. Roger Poitras, Clerk of the Circuit Court, St. Lucie County Court House, Fort Pierce, Florida, 33450; and to Hon. Evelyn R. Flack, Clerk of the Fourth District Court of Appeals, P. O. Box A, West Palm Beach, Florida, 33402, and to the Hon. Sid J. White, Clerk of the Supreme Court of the State of Florida, Supreme Court Building,

Tallahassee, Florida, 32304, by mail on this the 20th. day of October, A. D. 1971.

Charles R. P. Brown

Charles R. P. Brown
Attorney for Respondent
301 South Sixth Street
P. O. Box 1418
Fort Pierce, Florida, 33450